



Fast Track Proposed Regulation Agency Background Document

Agency name	Board of Social Work, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC140-20
Regulation title	Regulations Governing the Practice of Social Work
Action title	Flexibility in supervision and continuing education
Date this document prepared	7/31/09

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The amended regulations will clarify regulations pertaining to practice as a candidate for licensure under supervision and allow more flexibility in obtaining hours of face-to-face supervision. An amendment will specify that a candidate must reapply for approval if he has not passed the required examination within two years. Finally, amendments to continuing education requirements will specify and clarify the subject matter for approved CE, including the two hours of ethics or laws on practice, and will require that a request for an exemption must be made prior to the renewal date.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On July 17, 2009, the Board of Social Work adopted amendments by a fast-track action to 18VAC140-20-10 et seq., Regulations Governing the Practice of Social Work.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Social Work the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

The specific regulatory authority for the Board of Social Work is:

§ 54.1-3705. Specific powers and duties of the Board.

In addition to the powers granted in § [54.1-2400](#), the Board shall have the following specific powers and duties:

1. To cooperate with and maintain a close liaison with other professional boards and the community to ensure that regulatory systems stay abreast of community and professional needs...

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the amended regulation is clarity and flexibility so applicants, supervisees and licensees will be better able to comply with requirements. Allowing more flexibility in face-to-face supervision requirements may enable a few persons to complete supervision requirements more quickly and obtain a license to provide social work services. Allowing more flexibility in continuing education requirements will give licensees more options and opportunities to obtain

required hours and courses. Changes that allow social workers more time to focus on providing service to clients are beneficial to public health, safety and welfare. The amendment to specifically prohibit a supervisee (not yet licensed) from representing himself as an independent practitioner protects persons who may be receiving services from such a person.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

The proposed amendments are intended to clarify regulations that have been problematic for licensees and applicants; they will address questions that have arisen for which the regulations did not clearly state board policy. Additionally, amendments will make supervision requirements consistent and more flexible. Accordingly, the Board does not expect the regulatory changes to be controversial.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The amended regulations will clarify regulations pertaining to practice as a candidate for licensure under supervision to eliminate confusing language about full-time and part-time and to allow more flexibility in obtaining hours of face-to-face supervision. An amendment will specify that a supervisee may not directly bill for services or represent himself as an independent practitioner. An amendment will specify that a candidate must reapply for approval if he has not passed the required examination within two years. Finally, amendments to continuing education requirements will specify and clarify the subject matter for approved CE must pertain to the practice of social work or another behavioral health field, including the two hours of ethics or laws on practice. Amendments will require that a request for an exemption must be made prior to the renewal date and allow membership on a social work board to count as two hours of category II continuing education.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

- 1) The primary advantage to persons seeking licensure is more clarity in regulation to address questions and situations that have been problematic. Additionally, more flexibility in the regulation for face-to-face supervision will make the requirement more reasonable to meet. Amendments to the regulation for two hours of ethics and laws will expand the availability of courses and activities that may be used to meet the continuing education requirements. The restriction on supervisees holding themselves out as independent practitioners further protects the public. There are no disadvantages to the public.
- 2) The primary advantage to the agency is the resolution of issues and questions that have taken staff and board time to address. Clarity and flexibility in the continuing education requirements and in the supervision requirements may result in fewer hours and meetings for board committees to address non-routine applications or non-compliance in a CE audit. There are no disadvantages to the agency or the Commonwealth.
- 3) There are no other issues.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities particularly affected.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs to the agency.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The entities that are likely to be affected by these regulations would be: supervisees, persons who have applied for licensure and licensees.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are currently 4855 licensed clinical social workers and 302 licensed social workers, who may be positively affected by the proposed regulations. Since the agency does not register places of employment, there is no estimate of the number that would be small businesses.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There may be a cost-benefit to supervisees working to obtain face-to-face supervision, since the hourly requirement is more flexible; and to licensees looking for courses to fulfill the two hours of laws and ethics, since the requirement is more generally and clearly stated.</p> <p>For those who must re-apply if they have not passed the licensure examination in two years, the cost for an application would be \$100. There are approximately 20 persons who were approved to sit for the examination and either have not taken it or have not passed. They would be required to re-apply if they cannot pass in the next 2 years and then decide to pursue licensure.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The only alternative would be to continue dealing with these issues on an ad hoc or case-by-case basis, so each issue involving supervision hours or continuing education hours would be reviewed by staff and could be sent for consideration to the Credentials Committee or the Continuing Education Committee. Not only is that an inefficient method of addressing questions and problems, it has the potential of inconsistency and inequity.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no impact on the family

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Current requirement	Proposed change and rationale
10	Sets out definitions for words and terms used in regulation	Adds a definition for “supervisee” as a person who is getting supervised post-graduate experience as required for licensure. <i>Term is used in section 50 but is not currently defined.</i>
50	Sets out the educational and experience requirements for licensed clinical social workers	An amendment to subsection B will add more flexibility to the requirement for face-to-face supervision by changing from one hour each week to a minimum of one and maximum of four per 40 hours of work experience. <i>A similar amendment was recently added in regulations for counseling to address an issue of non-compliance if a supervisee misses a few weeks of meeting face-to-face with his supervisor. With the amended language, it is more flexible and a more definitive formula to follow. The minimum and maximum hours per 40 hours of work are necessary to ensure face-to-face supervision throughout the years of supervised work experience.</i> A new subsection E is added to specify that: Supervisees may not directly bill for services rendered or in any way represent themselves as independent, autonomous

		<p>practitioners or licensed clinical social workers. During the supervised experience, supervisees shall use their names and the initials of their degree, and the title "Supervisee in Social Work" in all written communications. Clients shall be informed in writing of the supervisee's status and the supervisor's name, professional address, and phone number. <i>The new language is added to address a recent situation in which an unlicensed person, while under supervision, wanted to set up an independent office and bill for clinical services. While the Board was able to deny the request, there was no clear prohibition in regulation as there is in rules for other behavioral science professions. Subsection E is essential for public protection to ensure that clients are adequately informed that the person providing clinical services is "in training" and under supervision. They also need to be informed about who is supervising the person, so they can communicate if there are concerns or problems.</i></p>
60	<p>Sets out the education and experience requirements for licensed social workers</p>	<p>Amendments in subsection C: 1) Eliminate the "full-time" or "equivalent in part-time experience" that was previously changed in section 50 but inadvertently not amended in section 60. <i>The requirement is 3,000 hours; there is a minimum of 2 years and a maximum of 4 years within which to complete the hours. It is not necessary to specify whether the supervisee works "full-time" or "part-time."</i> 2) The flexibility of no less than one hour or more than four hours per 40 hours of work experience (identical to language in section 50) was added.</p>
70	<p>Sets out the examination requirement for licensure</p>	<p>Subsection C is amended to require a candidate who has not <u>passed</u> an examination within 2 years to reapply. <i>Currently, regulations require that a candidate take an examination within 2 years, but that would allow someone to remain an active applicant indefinitely and require the board to maintain the application file if he attempts passage of the examination once every two years. A candidate who has not passed an examination within two years is unlikely to ever pass unless he obtains some additional education and/or experience to make up deficiencies in knowledge and/or skills. A candidate can take an examination once every 90 days, so within a two-year period, he can attempt the exam 8 times.</i></p>
105	<p>Sets out the continuing education requirements for renewal of licensure</p>	<p>Subsection A is amended to specify that continuing education courses or activities shall be directly related to the practice of social work or another behavioral health field. The requirements for a minimum of two of those hours pertaining to ethics or the standards of practice for the behavioral health professions or to laws governing the practice of social work in Virginia. The requirement that the "ethics" must pertain to the Code of Ethics of one of the social work professional associations listed under subdivision B 1 d is deleted. <i>Subsection A has been problematic for licensee attempting to</i></p>

	<p><i>comply with the requirements for continuing education. First, there is nothing that specifically states that courses or activities must be directly related to social work or to another behavioral health. Second, the requirement for two hours of ethics has been confusing and interpreted to mean that the course must be offered by a social work organization, specifically addressing the Code of Ethics of that group. The amendments will allow for more flexibility in meeting the CE requirements by generally allowing courses related to any behavioral health field and by allowing the two hours to pertain to ethics or standards of practice for the behavioral health professions.</i></p> <p>Subsection A 2 is amended to specify that a request for an exemption from CE compliance must be made prior to the renewal date. <i>The requirement is necessary to ensure the circumstances are legitimate and not used as an excuse to avoid compliance with an audit of CE two years after a renewal date.</i></p> <p>Subsection B is amended only for greater clarity and to update the name of one organization.</p> <p>In the Category II activities (self-documented, individual learning), a licensee is allowed up to 2 hours for serving as an officer or committee member of a national professional social work association. The amendment will grant the same 2 hours for membership on a state social work licensing board, which is an activity more likely to educate one in the laws and standards of the profession.</p> <p>The term “independent “ study is amended to read “individual” study to be more descriptive.</p>
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